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IN THE

Supreme Court of the United States

OCTOBER TERM, [redacted] 1969

No. ..... [redacted] 95

PETER D. SCHWEITZER, LARRY F. GROTH, NAOMI D. PELLEY, RONALD R. PELLEY, ROGER J. MORRIS, HENRY BERGHOFF, ALBERT M. FLUCKEY, KRISANN K. FLUCKEY, ELDRIDGE H. RAVEN, MAUREEN MINEHART, and JUDITH BERRY,
Plaintiffs and Petitioners,

v.

CLERK FOR THE CITY OF PLYMOUTH and ELECTION COMMISSION FOR THE CITY OF PLYMOUTH,
Defendants and Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

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WO. 1-8715—WO. 1-8722

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

Abdeen M. Jabara, on behalf of Petitioners, prays that a writ of certiorari issue to review the judgment of the Supreme Court for the State of Michigan.

OPINIONS BELOW

The opinion of the Circuit Court of Wayne County is unreported and is printed in Appendix C hereto, *infra*, pp. 28-54. The opinion of the Supreme Court of Michigan has not yet been officially reported, but it is unofficially reported in 164 N.W. 2d 30, and is printed in Appendix A hereto, *infra*, pp. 11-18.

JURISDICTION

The judgment of the Supreme Court for the State of Michigan was entered on February 3, 1969 (Appendix A, *infra*, pp. 11-18). The jurisdiction of the Court is invoked under 28 U.C. Code 1257(3).

QUESTION PRESENTED

Whether making the ownership of taxable property an eligibility requirement for local public office violates the requirements of the equal protection and due process clauses of the United States Constitution.

CONSTITUTIONAL PROVISIONS AND CITY CHARTER PROVISIONS INVOLVED

The following City Charter provisions are set forth in Appendix D, *infra*, p. 55: Section 4.4. of Chapter 4 of the Charter for the City of Plymouth, Michigan; Fourteenth Amendment of the United States Constitution.

STATEMENT

Petitioner Peter D. Schweitzer, at the time of institution of this suit in the Circuit Court for Wayne County, was Associate Minister of the First Methodist Church in the City of Plymouth, Michigan. Prior to the January 3, 1967, deadline for filing nominating petitions for the office of City Commissioner, Schweitzer submitted a petition signed by forty registered electors nominating him for the City Commission of Plymouth. The Clerk for the City of Plymouth advised Schweitzer by letter that:

> ". . . since you do not meet all of the eligibility and qualification requirements as enumerated in Section 4.4 of the City Charter, your nominating petition for the office of City Commissioner is hereby rejected and your name will not be placed on the ballot for election in the Spring of 1967.
>
> "Specifically, this decision is based upon the fact that you do not meet the following eligibility requirement.
>
> "To be eligible to hold an elective office, a person shall have been, for a period of two years, prior to the date of his election or appointment to office, the owner of property located within and assessed for taxes by the city."

It was upon this ruling of the Election Commission for the City of Plymouth that the Petitioners sought a writ of mandamus on January 25, 1967, in the Circuit Court for Wayne County directing the Respondents, the Clerk for the City of Plymouth and the Election Commission for the City of Plymouth, to file Petitioners' nominating petition and place Petitioner Schweitzer's name on the ballot as a candidate for election to the City Commission for the City

of Plymouth. The Petitioners, in addition to Schweitzer, are all duly registered electors and residents of the City of Plymouth and signers of the petition nominating Schweitzer to the Plymouth City Commission. The Petitioners allege in paragraph 6 of the Complaint for the writ of mandamus, that Section 4.4 of the Plymouth City Charter violates the Fourteenth Amendment of the Constitution of the United States.

On March 1, 1967, Judge Victor J. Baum of the Wayne County Circuit Court ruled that the property ownership requirement of Section 4.4 of the Plymouth City Charter was unconstitutional (Appendix C, *infra*, pp. 28-54) and a writ of mandamus issued directing the Respondents to file the petition and place Schweitzer's name on the ballot.

On March 16, 1967, Respondents filed a Claim of Appeal from the decision of the Circuit Judge to the Michigan Court of Appeals and Petitioners, on April 13, 1967, filed an Application for Leave for Direct Appeal in the Michigan Supreme Court and the Supreme Court for the State of Michigan, on July 25, 1967, granted Petitioners' Application for Leave to Appeal to the Michigan Supreme Court prior to decision by the Michigan Court of Appeals.

On February 3, 1969, the Supreme Court for the State of Michigan, with Justices Adams and Kavanaugh dissenting, reversed the decision of the Circuit Court of Wayne County, holding that a city charter provision requiring a public office holder to be, for a period of two years prior to the date of his election or appointment to public office, the owner of property within and assessed for taxes by the city, was not unconstitutional under the due process and equal protection clauses of the State and Federal Constitutions (Appendix B, *infra*, pp. 19-27).

REASONS FOR GRANTING WRIT

This Court does not maintain the existence of some legal bifurcation between the right to vote, on the one hand, and the right to vote for a candidate of one's choice, or, for that matter, the right to hold public office, on the other. This Court's recent decision concerning eligibility requirements violative of rights secured by the First Amendment is applicable here, as well as its decision upholding the right to free association to advance political beliefs. *Bond v. Floyd,* 385 U.S. 116, 87 S.Ct. 339, 17 L.Ed. 2d 235 (1966); *Williams v. Rhodes,* 393 U.S. 23, 89 S.Ct. 5, 27 L.Ed. 2d 24 (1968). A voter is entitled to the *effective* casting of his vote, *Williams v. Rhodes,* 393 U.S. 23, 89 S.Ct. 5, 27 L.Ed. 2d 24 (1968) and the opportunity to vote for a candidate of his choice. The language of the Court in *Reynolds v. Sims,* 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed. 2d 506 (1964), is especially pertinent to this case:

> "But representative government is in essence self-Government through the medium of elected representatives of the people, and each and every citizen has an *inalienable right to full and effective 'participation in the political processes of his States' legislative bodies.* 377 U.S. at 565.
>
> "And history has seen a continuing expansion of the scope of the right of suffrage in this country. The right to *vote freely for the candidate of one's choice* is the essence of democratic society, and any restrictions on that right strike at the heart of representative government. And the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of franchise." 377 U.S. at 555. (Emphasis added.)

This Court's concern with making wealth an electoral standard was recently evidenced in the granting of peti-

tions for writs of certiorari in two cases. In *Cipriano v. City of Houma,* No. 705, jurisdiction by this Court was noted and the petition for a writ was granted on the question of whether a Louisiana requirement that only residents who own property can vote on municipal utility revenue bonds, violates the Fourteenth Amendment equal protection clause. Also, a petition for the issuance of a writ of certiorari was granted in No. 258, *Kramer v. Union Free School District No. 15,* in which the question was whether the New York Education Law's requirement that voters or their spouses in school district elections be either real property owners, lessees, parents or guardians of children attending district schools, violates the equal protection clause of the Fourteenth Amendment by disenfranchising a bachelor who is neither a property owner, parent, lessee or guardian.

This Court has clearly enunciated that wealth is not a proper electoral standard. In *Harper v. Virginia Board of Elections,* 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed. 2d 169 (1966), Justice Douglas delivered the opinion of the Court. He wrote:

> ". . . Wealth, like race, creed or color, is not germane to one's ability to participate intelligently in the electoral process. Lines drawn on the basis of wealth or property, like those of race (*Korematsu v. United States,* 323 U.S. 214, 216, 89 L.Ed. 194, 198, 65 S.Ct. 193), are traditionally disfavored. See *Edwards v. California,* 314 U.S. 160, 184-185, 86 L. Ed. 119, 130, 131, 62 S.Ct. 164 (Jackson J., concurring).; *Griffin v. Illinois,* 351 U.S. 12, 100 L.Ed. 891, 717 S.Ct. 585, 55 ALR 2d 1055; *Douglas v. California,* 372 U.S. 353, 9 E.Ld. 2d 811, 83 S.Ct. 814."

An examination of the duties and responsibilities of a City Commissioner in Plymouth, Michigan, reveals that

Section 4.4 of the Plymouth City Charter does not have a reasonable relation to city government necessary to sustain a property ownership classification in the operation of the elective franchise. As the Circuit Judge below found (Appendix C, *infra*, pp. 28-54).

> "The City of Plymouth has a 'strong commission' form of government. The Commission of the City of Plymouth wields the entire legislative power vested in the City. Chapter 5, Plymouth Charter.
>
> "In addition, the Commission of the City of Plymouth wields great, albeit indirect, executive power. One of its members serves as Mayor. The Commission selects the Mayor, who presides over Commission meetings and is also the titular and ceremonial head of city government.
>
> "More importantly, the Commission selects and at its pleasure removes the City Manager, who is day-to-day administrative head of the executive branch of city government.
>
> "The Commission also appoints the City Attorney, Board of Review, Personnel Service Appeal Board, and certain other boards and commissions. The City Manager appoints other important city officials, but only with the advice and consent of the City Commission. Chapter 4, 5, 6, and 7, Plymouth Charter."

Moreover, Section 4.4 of the Plymouth City Charter not only disqualifies from running for local public office Plymouth residents who are without property, but also prevents them from electing representatives, who, like themselves, are substantially unpropertied. The report of the Respondent Clerk for the City of Plymouth below indicated that nearly twenty per cent (20%) of the dwelling units in the City of Plymouth are rental units. One can hardly contend that a renter does not pay indirect taxes.

Using the ownership of taxable property as a requirement for election to the legislative body of a municipality is favoring one economic group over another and significantly affects the allocation of political power among groups or classes in a local community. The favoring of one economic class or group over another, when the allocation of political power among people is concerned, cannot be a permissible governmental objective.

The onus of Section 4.4 is not just that the poor are given no voice in local government but that persons owning a substantial amount of property, in corporate form, trusts or intangibles not taxed by the City of Plymouth, are also disqualified from running for local public office.

It is no argument to say that Plymouth is a home-rule City and that the City Charter was approved by a majority of the citizens of Plymouth. Constitutional guarantees are designed to protect individuals from majority oppression. *Hunter v. Erickson,* 393 U.S. 385, 89 S.Ct. 557, 21 L.Ed. 2d 616 (1969).

In *Landes v. Town of North Hempstead,* 20 N.Y. 2d 417, 284 N.Y.S. 2d 441 (1967), the New York Court of Appeals was presented with an identical problem to that in the instant case. In that case, the plaintiff was a duly designated nominee of the Democratic party for the office of local councilman and the Court of Appeals declared unconstitutional and void those provisions of the town law which required a holder of an elective office to be an owner of record of real property within the town. The reasoning used in that decision is similar to that which we urge in this Petition:

> "At a time when the taxation of its real property was the chief concern of a town, this reasoning may have had some validity, although we fail to see how it may be said that qualities of carefulness and

> frugality were ever the monopoly of those owning real property. Indeed, most town problems affect owners and tenants alike: zoning, highways, parks, fire, water, and sewage districts, traffic regulation—to name a few." 284 N.Y.S. 2d at 444.

Petitioner Schweitzer has been denied the opportunity to present himself to the voters as a candidate for local public office. The remaining Petitioners have been denied the right to effectively vote for a candidate of their choice and to associate for the advancement of their political views. No reasonable relationship between the property ownership eligibility requirement of Section 4.4, and the public office in the City of Plymouth, has been shown and, indeed, there is none.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX "A"

OPINION

STATE OF MICHIGAN—SUPREME COURT

Peter D. Schweitzer, Larry F. Groth, Naomi D. Pelley, Ronald R. Pelley, Roger J. Morris, Henry Berghoff, Albert M. Fluckey, Krisann K. Fluckey, Eldridge H. Raven, Maureen Minehart, and Judith Berry,
Plaintiffs and Appellees,
v.
Clerk for the City of Plymouth, and Election Commission for the City of Plymouth,
Defendants and Appellants.

Before the Entire Bench

Brennan, J.

I. THE FACTS

Peter Schweitzer lives in the City of Plymouth. Sometime before January 3, 1967, he decided to become a candidate for the office of city commissioner. He submitted to the city clerk petitions signed by 40 electors, requesting that plaintiff Schweitzer's name be printed on the ballot in the 1967 spring election.

The defendant clerk refused to accept the petitions. He wrote plaintiff Schweitzer as follows:

> ". . . since you do not meet all of the eligibility and qualification requirements as enumerated in Section 4.4 of the City Charter, your nominating petition for the Office of City Commissioner is hereby rejected

and your name will not be placed on the ballot for election of City Commissioners to be conducted in the Spring of 1967.

"Specifically, this decision is based upon the fact that you do not meet the following eligibility requirement;

"to be eligible to hold an elective office, a person shall also have been, for a period of two years prior to the date of his election or appointment to office, the owner of property located within and assessed for taxes by the city."

Thus frustrated in his efforts to run for city commissioner, plaintiff Schweitzer filed suit in Wayne County Circuit Court.

On March 13, 1967, the learned circuit judge issued his judgment of mandamus, directing the defendant Clerk to accept the petitions and print Schweitzer's name on the ballot.

We granted leave to appeal, by-passing the Court of Appeals.

II. THE ISSUES

Plaintiffs claim, and the Circuit Court held, that the charter provision of the City of Plymouth[1] violates the

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[1] "Except as otherwise provided in this charter, an elector of the city shall be eligible to hold elective or appointive office, if he shall have been a resident of the city for two years immediately prior to the date of his election or appointment to office, and shall not be in default to the city, the County of Wayne, or to any school district located within the city. To be eligible to hold an elective office, a person shall also have been, for a period of two years prior to the date of his election or appointment to office, the owner of property located within and assessed for taxes by the city * * *." City of Plymouth Charter, §4.4.

equal protection and due process clauses of the State and Federal Constitutions.

The issue as to whether a property ownership qualification for public office is constitutionally valid is, however, broader than the Plymouth City Charter. CLS 1961, §340.492 (Stat Ann 1968 Rev §15.3492), provides a similar qualification for membership on a school board.

III. THE PRECEDENTS

There is no appellate decision in this State on the question of the constitutionality of a property ownership qualification for holding public office.

There are several Michigan cases in which the validity of such provisions is assumed and where the only question is whether the property ownership qualification has been met. *People, ex rel. Godwin v. Board of Education of Grand Rapids,* (1878), 38 Mich 95; *Brady v. Weissenstein* (1932), 260 Mich 678; *Attorney General, ex rel. Kennedy v. Cisco* (1961), 362 Mich 649.

Defendants cite cases from other jurisdictions holding that property ownership qualifications for public office are valid. *State, ex. rel. Fletcher v. Ruhe* (1898), 24 Nev 251 (52 P 274); *State v. McAllister* (1893), 38 W.Va. 485 (18 SE 770); *McMillin v. Neely* (1909), 66 W Va 496 (66 SE 635); *State, ex. rel. Morrison v. Freeland and Harbert* (1954), 139 W Va 327 (81 SE 2d 685).

Although there has been some difference of opinion[2] the courts have uniformly held that a property ownership qualification for public office is not unconstitutional.[3]

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[2] Notably the dissent of Brannon, J., in *State v. McAllister, supra.*

[3] 42 Am Jur, Public Officers, §49, p 918.

Appellees cite recent decisions which have departed from the former uniformity. *Landes v. Town of North Hempstead* (1967), 20 N Y 2d 417 (284 NYS 2d 441), and *Pierce v. Village of Ossining,* a Federal District Court case presided over by a three judge panel in the Southern District of New York (68 Civ. 4150).

IV. THE ARGUMENT

Plaintiffs-appellees argue that the equal protection clause requires that the law deal similarly with persons who are similarly situated. It is said that in this case we deal with two classes of persons, propertied and unpropertied, who are similarly situated with respect to their relation to government and the sharing of governmental powers. Yet in face of these similarities, the property ownership qualification denies to the unpropertied or to those with property not subject to property tax a share in governmental power.

It is further argued that the property ownership qualification denies to all persons the right to vote for an unpropertied candidate. In support of the claim that such qualification amounts to invidious discrimination, plaintiffs cite the following from the *Landes Case:*

> "Ownership of real property does not render one more interested in, or devoted to, the concerns of the town. In a society such as ours, characterized by its 'mobility' and 'anonymity' (Cox, *The Secular City* (rev. ed., 1966), p. 33), a landowner is no more likely to be permanently established in a town and, by that token, better qualified to govern than one who is not a property owner. Examples come readily to mind which demonstrate the unrealistic character of the property qualification: an elected town councilman,

suddenly compelled by financial reverses to sell his home and move into an apartment, would be required to resign from office; an apartment dweller who owned a taxpayer* in town but who commuted to his place of business in, for instance, New York City and took no interest or part in civic affairs would be fully eligible for town office; and an apartment dweller not owning real property but with a place of business in town and deeply involved in community affairs would be ineligible. All in all, we suggest that it is impossible today to find any rational connection between qualifications for administering town affairs and ownership of real property."

* The term *taxpayer* is used in the sense of a building used merely to bring in income enough to pay the taxes.

Plaintiffs-appellees also argue by way of analogy from recent decisions of the United States Supreme Court.

It is urged that the activist thrust of such decisions as Baker v. Carr, 369 US 186 (82 S.Ct. 691), 7 L ed 2d 663 [1961]; Reynolds v. Sims, 377 US 533 (84 S Ct 1362), 12 L ed 2d 506 [1964]; Harper v. Virginia Board of Elections, 383 US 663, (86 S Ct 1079), 16 L ed 2d 169 [1966], and others, will carry the Supreme Court of the United States into the camp of the plaintiffs.

V. THE REASONING

The application of the equal protection clause to qualifications for holding public office, as opposed to voting, is a step which the United States Supreme Court has not yet taken.

There are new and different problems here. It is easy to say that everyone should have the right to vote. It is

not so obvious that everyone should have the right to hold public office.

A qualification for public office is not a regulation under the police power of the sovereign. A regulation establishing a curfew or a speed limit which distinguished between propertied and unpropertied would deny equal protection of the laws. A law, however, which taxes those who own property and does not tax those who do not own property is not unconstitutional. For the power of government to determine what things or activities are to be taxed is not limited in the same way as the power of government to regulate human activity for the health, welfare and safety of the community. A qualification for the holding of public office similarly is not such a law as interferes with the personal liberty of our citizens or deprives them of the use and enjoyment of their property.

Courts should not apply, in testing a qualification for public office, the same standards of reasonableness and relationship to purpose as are found in cases dealing with regulations under the police power.

Age limitations have been prescribed for many public officers.[4] Both minimum and maximum ages have been set. Such qualifications are essentially arbitrary, and reflect the choice of constitution-writers and law-makers. The men who wrote the U. S. Constitution wanted mature presidents. They provided that the president must be 35 years of age. We are told that in the not too distant future, the majority of Americans will be under 25. Coming to power, this new generation may prefer vigor to maturity, and amend the Constitution to provide a maximum presidential age. The decision will be theirs.

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[4] US Const, art 1, §2, 3 and art 2, §1.

The establishing of qualifications for public office is essentially a political decision. It is peculiarly so, since the same majority which establishes the qualifications elects the office holders. If a candidate has the votes to change the eligibility requirement; and if he doesn't have the votes to change the qualification, then he does not have the votes to be elected.

In a democracy, the majority rules. By definition, a minority cannot have an equal right to govern.

The majority of the people of Plymouth have established the qualifications for their city commissioners.

It is urged that they had no rational basis to do so. It may be conceded that their reasons are as parochial and intolerant as those advanced by the majority in *State v. McAllister, supra.*[5]

Still, Plymouth, Michigan, is a sleepy little town, even today. Perhaps it is a backward town, by the standards of

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[5] "Experience in municipal matters, and a wise consideration of the question, will convince any unbiased mind that such a law has under it the very best of reasons. The fact that a man owns real estate has little bearing on the question as to whether he is capable of filling an office, but the real-estate owners are the substantial people of any community—its bone and its sinew—and there are but few among them that do not have some property pride, and an interest in the welfare and prosperity of their permanent dwelling place. On the other hand, among those not owning real estate belong the floating population—those who are too trifling and unthrifty to want property, and those who, having wasted their substance in riotous living, and spent their days in idleness are jealous of their neighbors' prosperity and are ready to tear down, destroy and scatter broadcast, the results of hard earnings, frugal management, and careful savings. To them although electors, the prosperity and welfare of a municipality amounts to nothing, for, like the Bedouins of the plains, 'neath the shadows of night they can fold their tents and silently steal away, while if there are any among the unfortunate but deserving poor who would make capable officers, their more successful neighbors are ever ready and willing to lend a helping hand, and see that they own the necessary 'ten feet of ground.'"

those who see American society as "mobile" and "anonymous."

But the issue is whether the courts, from the depths of their urbanity can impose upon the people of a home rule city a "purer" form of democracy than they choose for themselves.

A benevolent tyrant thinks he knows what is best for the people. A judicial activist, who is very sure of himself may have no trouble concluding that the electorate is unreasonable or even irrational.

Today, we consider a suburban town where the people want their commissioners to be taxpayers. Tomorrow, we may have the case of a different kind of municipal corporation in which the tenants want to be represented by tenants. The roof of American self-government is big enough for both.

Reversed. No costs, a public question being involved.

APPENDIX "B"

DISSENTING OPINION

STATE OF MICHIGAN—SUPREME COURT

Peter D. Schweitzer, Larry F. Groth, Naomi D. Pelley, Ronald R. Pelley, Roger J. Morris, Henry Berghoff, Albert M. Fluckey, Krisann K. Fluckey, Eldridge H. Raven, Maureen Minehart, and Judith Berry,
Plaintiffs and Appellees,
v.
Clerk for the City of Plymouth, and Election Commission for the City of Plymouth,
Defendants and Appellants.

Before the Entire Bench

Adams, J.

This case involves a provision in section 4.4 of the charter of the city of Plymouth that "to be eligible to hold an elective office, a person shall also have been, for a period of two years prior to the date of his election or appointment to office, the owner of property located within and assessed for taxes by the city." Plaintiff Peter D. Schweitzer, a candidate for the office of city commissioner, failed to meet the property ownership provision. The remaining plaintiffs claim the right to vote for the candidate of their choice.

It is necessary to examine the duties and responsibilities of a city commissioner to determine whether section 4.4 of the city charter of the city of Plymouth has a reasonable relation to city government necessary to sustain such con-

stitutional classification in the exercise of the elective franchise. Defendants' brief states:

> "The members of the city commission have the power to borrow money and issue bonds; the payment of which is dependent on tax revenue; specially assess real property; zone the property of the city; adopt a budget and in point of fact, physically tax the property in the City of Plymouth in order to operate local government. It should also be noted that the City Commission has the power to condemn private property for public purpose, as well as to control the use of property under its police powers" (Charter references omitted).

Defendants candidly admit that the classification which is under attack has for its objective "the protection of the citizens of the city of Plymouth, *in* and the preservation *of* their property." (Emphasis added.) They state:

> "A complete view of the powers of the City Commission demonstrate the tremendous effect that body can have on Plymouth property; ——— Condemnation of private property by the exercise of the power of eminent domain; ——— establishment of the use to which property may be put by adoption and amendment of zoning law; ——— the control of the occupancy and manner of use by regulatory police power ordinances; ——— all this coupled with the power to tax, either generally by the establishment of the ad valorem tax annually, as the City Commission adopts its budget or specially as it undertakes public improvements; ——— is a powerful rationale for the establishment of the property requirement for the office of City Commissioner. And, as affidavits filed in this cause indicate, an average of 62.6 per cent of

the revenue for the providing of services to the city comes from property tax."

The Circuit Judge found:

"The City of Plymouth has a 'strong commission' form of government. The Commission of the City of Plymouth wields the entire legislative power vested in the City. Chapter 5, Plymouth Charter.

"In addition, the Commission of the City of Plymouth wields great, albeit indirect, executive power. One of its members serves as Mayor. The Commission selects the Mayor, who presides over Commission meetings and is also the titular and ceremonial head of city government.

"More importantly, the Commission selects and at its pleasure removes the City Manager, who is the day-to-day administrative head of the executive branch of city government.

"The Commission also appoints the City Attorney, Board of Review, Personnel Service Appeal Board, and certain other boards and commissions. The City Manager appoints other important city officials, but only with the advice and consent of the City Commission. Chapter 4, 5, 6, and 7, Plymouth Charter.

"Thus in barring Reverend Schweitzer from running for the City Commission, the charter has excluded him from an important repository of governmental power.

"There are other effects of Section 4.4 of the Plymouth charter which should be briefly examined. Two effects are obvious.

"First, those Plymouth residents who are substantially without property are prevented from running for public office within the City.

"Second, they are also prevented from electing repsentatives, who, like themselves, are substantially unpropertied. One would not be surprised to find a belief on the part of unpropertied persons that they could be most adequately represented in government by persons as poor and unpropertied as themselves.

"Poor people are not the only ones who feel the bite of the Plymouth charter. All residents of Plymouth, rich, poor, or in between, are deprived of a free choice of public representatives. All the voters of Plymouth, regardless of wealth, are denied the opportunity to have as a representative on the City Commission any person who fails the property test of Section 4.4 of the City charter.

"For example, if such a person should emerge who had statesmanlike potential, who was popular with the electorate and anxious to serve his city, he could not run and the voters could not elect him. All voters, regardless of wealth, would be denied an opportunity to support such a candidate.

"Moreover, there may be people of substantial property whose opportunity to run for office is destroyed by the charter. The charter test is ownership of property assessed for taxes in Plymouth. Many forms and kinds of property are not subject to assessment or taxation by municipal units of government. For example, intangible personal property such as bank deposits, corporate stocks and bonds, are not assessed or taxed by the City of Plymouth. Michigan Statutes Annotated 7.556(1) et seq.

"Also much of the tangible personal property located in Plymouth is not assessed or taxed there. Section 7.9, Michigan Statutes Annotated, exempts from taxation various kinds of personal property. For the most part, chattels which are held for personal consumption and enjoyment are not taxed.

"For example, the seventh paragraph of Section 7.9, Michigan Statutes Annotated, *exempts 'household furniture, provisions and fuel to the value of $5,000 to each household.'*

"And other paragraphs in this particular section of our statutes go on to exempt personal property as follows:

"'Sixth, the library, family pictures, schoolbooks, one sewing machine used and owned by each individual or family, and wearing apparel of every individual.'

"Apparently this exemption is without monetary limit.

"The eighth paragraph of this particular section goes on to exempt 'the working tools of any mechanic not to exceed in value the sum of $500.'

"Also the eleventh paragraph exempts 'personal property of the value not to exceed $500 used by a householder in the operation of a business in his dwelling, or at one other location in the city, township or village where the householder resides.

"Under Section 9.250, Michigan Statutes Annotated, automobiles held for personal use are exempt from assessment or taxation by City govenment. So are most boats, particularly pleasure boats. See Section 7.281, Michigan Statutes Annotated.

> "speaking generally, these exemptions cover much tangible personal property which is not held for commercial use but for the consumption and enjoyment of the owner."

The Circuit Judge concluded that the property requirement not only disqualified unpropertied persons but persons owning a substantial amount of property in Plymouth which was exempt to them or not taxable.

The only eligibility requirements for the office of governor or lieutenant governor are that a person must have attained the age of 30 years and have been a registered elector in the State for four years next preceding his election.[1] One of the responsibilities of the Chief Executive of this State is to protect and preserve the property of her citizens.

The basic right to participate in government in Michigan is set forth in art 1, §1, and art 2, §1, of the Constitution of 1963. Art 1, §1, provides:

> "All political power is inherent in the people. Government is instituted *for their equal benefit,* security and protection." (Emphasis added.)

Art 2, §1, provides:

> "Every citizen of the United States who has attained the age of 21 years, who has resided in this state six months, and who meets the requirements of local residence provided by law, shall be an elector and *qualified to vote in any election except as otherwise provided in this constitution.* The legislature shall define residence for voting purposes." (Emphasis added.)

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[1] Const 1963, art 5, §22. See also, const 1963, art 4, §§7, 8, for eligibility requirements for State legislators.

If the sole concern and purpose of the government of the city of Plymouth was the protection and preservation of property, it might be conceded that the property ownership requirement has some reasonable relationship to that city's governmental objectives but the concern of the city for its citizens does not end at the door of the property owner. It is responsible for the welfare of all its citizens in numerous areas of local governmental activity.

In *Harper v. Virginia Board of Elections* (1966), 383 US 663 (86 S Ct 1079, 16 L ed 2d 169), Justice Douglas delivered the opinion of the Court. He wrote:

> "We conclude that a State violates the Equal Protection Clause of the Fourtenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard" (p. 666).

And again:

> "To introduce wealth or payment of a fee as a measure of a voter's qualifications is to introduce a capricious or irrelevant factor" (p. 668).

On November 1, 1968, in the case of *Pierce v. Village of Ossining,* (SD NY, 1968), 292 F Supp 113, a three-judge court of the U.S. District Court for the southern District of New York (68 Civ 4150), declared unconstitutional a State statute that disqualified the plaintiffs from voting in a village election on the question of a change in village government from a mayoral system to a village manager system because they were not owners "of property in the village assessed upon the last preceding assessment roll thereof."

The language of the Court in *Reynolds v. Sims,* 377 US 533 (84 S Ct 1362, 12 L ed 2d 506) (1964), is especially pertinent to this case:

"But representative government is in essence self-government through the medium of elected representatives of the people, and each and every citizen has an inalienable right to full and effective participation in the political processes of his State's legislative bodies" (p. 565).

"And history has seen a continuing expansion of the scope of the right of suffrage in this country. The right to vote freely for the *candidate of one's choice* is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government. And the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise" (p. 555). (Emphasis added.)

For an application of the above case at the level of local government, see *Landes v. Town of North Hempstead*, 20 NY 2d 417, 284 NYS 2d 441 (1967).

In the recent case of *Williams v. Rhodes* (1968), — US — (89 S Ct 5, 10, 21 L ed 2d 24, 31), Mr. Justice Black in the opinion of the Court, wrote (p.):

"* * * the state laws [Ohio's] place burdens on two different, although overlapping, kinds of rights—the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively. Both of these rights, of course, rank among our most precious freedoms. We have repeatedly held that freedom of association is protected by the First Amendment. And of course this Freedom protected against federal encroachment by the First Amendment is entitled under the Fourteenth

> Amendment to the same protection from infringement by the States. Similarly we have said with reference to the right to vote: 'No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.'"

Constitutional rights are not subject to legislative interference. The proposition was stated by Justice White in the recent case of *Hunter v. Erickson,* No. 63, October Term 1968 [January 20, 1969], in this fashion: "The sovereignty of the people is itself subject to those constitutional limitations which have been duly adopted and remain unrepealed" (p. 527).

I am unable to find any reasonable or rational relationship to the governing of a city that permits the requirement of ownership of property assessed for taxes in order that a person be eligible for the office of city commissioner. Plaintiff Schweitzer has been denied the opportunity to present himself to the voters as a candidate for the governing body of the city of Plymouth. The remaining plaintiffs have been completely debarred from their right to associate for the advancement of political beliefs and to cast their votes effectively. In this respect, the violation of constitutional rights here is even more flagrant than in *Williams* where upon compliance with state law those rights could be asserted.

Section 4.4 of the city charter of the City of Plymouth violates the equal protection clauses of the Constitution of the United States and of this State, as well as the First Amendment of the United States Constitution. I vote to affirm the trial judge.

No costs, a public question being involved.

Thomas M. Kavanaugh, J., concurred with Adams, J.

APPENDIX "C"

OPINION OF WAYNE COUNTY CIRCUIT COURT

STATE OF MICHIGAN—In the Circuit Court for the County of Wayne

Peter D. Schweitzer, Larry F. Groth, Naomi D. Pelley, Ronald R. Pelley, Roger J. Morris, Henry Berghoff, Albert M. Fluckey, Krisann K. Fluckey, Eldridge H. Raven, Maureen Minehart, and Judith Berry,
Plaintiffs,

v.

Clerk for the City of Plymouth, and Election Commission for the City of Plymouth,
Defendants.

Proceedings had in the above entitled cause before the Honorable Victor J. Baum, Circuit Judge, at 1701 City-County Building, Detroit, Michigan 48226, on Tuesday, March 7, 1967.

Appearances: Abdeen M. Jabara, Esq., 1217 First National Building, Detroit, Michigan 48226, appearing on behalf of Plaintiffs; Draugelis and Ashton, by Edward F. Draugelis, Esq., 824 Penniman Avenue, Plymouth, Michigan 48170, appearing on behalf of Defendants.

Detroit, Michigan,
Tuesday, March 7, 1967, 2:00 p.m.

The Court: Good afternoon. Schweitzer versus Clerk for the City of Plymouth, et al.

Mr. Draugelis: Defendant, your Honor.

Mr. Jabara: Plaintiff.

The Court: Gentlemen, I assume that you are getting close to the date for printing of ballots.

Mr. Draugelis: Yes, sir.

The Court: Because there is this kind of time pressure, I decided that I wouldn't delay the opinion until I could put it in polished form. I have now only rough notes. Here and there I have handwritten a portion of it. And I will be either reading or talking from those notes.

I would like to have the understanding with you that I would preserve the right to polish this opinion, perhaps to shorten it, with the further understanding that the result would not be changed.

Mr. Draugelis: Well, perhaps what we ought to do is hear the Court's opinion and then have a discussion with regard to it afterwards.

The Court: Well, you have a long wait.

Mr. Draugelis: I see.

The Court: You are free to do this. I think to save suspense I should say immediately that I am finding and holding in favor of plaintiffs and will order a writ of mandamus to issue as prayed.

Mr. Draugelis: And when will the order be effective? I guess that's the question I was going to ask.

The Court: Well, I would want the order to be effective promptly, so that these plaintiffs will be able to have their candidates enter into a campaign; so that the city fathers can print ballots and put the name of plaintiff Peter Schweitzer on the ballot.

I don't intend to change substance radically. I have an argument or two upon which I am relying which I am sure of, simply because I didn't have adequate time to research. I may want to eliminate these from the final opinion. It would not be my intention to add any thought or any position of substance.

Mr. Draugelis: The problem, of course, that I face, representing the City of Plymouth, is . . . The effective date of the order, of the issuance of the mandamus, is germane. I am in a position of relaying the Court's opinion to the city fathers and then abiding by their decision.

Does the Court have any idea about how long it would take before the regular opinion would be forthcoming?

The Court: I would be able to make only the roughest kind of estimates. I think I have notes here which will result in an opinion that probably will run 25 to 30 pages. I know that my court reporter would type these up just as soon as she possibly could. I don't think you will have too much trouble making notes concerning the reasons for decision.

Mr. Draugelis: All right.

The Court: And let me say also that while I am not at all confident that this decision would survive appeal, I don't think that I can grant a stay without detrimentally affecting such rights as plaintiffs may have.

Mr. Draugelis: Well, we wouldn't ask for an appeal to stay any further proceedings of this Court. I am only concerned about timely filing an appeal.

The Court: Yes.

Mr. Draugelis: Now the Court has indicated that the effective orders of today—

The Court: Well, of course—

Mr. Draugelis: —that the opinion isn't going to come down until later.

The Court: Yes.

Mr. Draugelis: You see, now my problem is the question for timely filing the appeal, may I point out to the Court.

The Court: Well, the time won't run out until I actually enter a regular order.

Mr. Draugelis: Yes.

The Court: A written order for mandamus.

Mr. Draugelis: All right. You see, if we can—unless the counsel is willing to stipulate on the record, as I am, of course, that we will be given a period of time, let's say the normal appeal time, from the date we receive this Court's written opinion.

The Court: Well, you will be entitled to that in any event, and all you need to do to appeal is to file a paper in which you say, "I hereby claim appeal."

Mr. Draugelis: File a claim of appeal and preserve my—

The Court: Your rights to appeal.

Mr. Draugelis: My rights to appeal, and then wait for the record to come down.

The Court: Well, we would do our best to get it out quickly to you.

Mr. Draugelis: That would be fine.

The Court: I don't think there should be any great problem of that kind.

Mr. Draugelis: All right. All right.

The Court: You will have the problem of writing briefs, which you will want to do, I suppose, only after you see a written opinion.

Mr. Draugelis: Yes.

The Court: You see, if I am wrong, the right of Reverend Schweitzer to hold office can still be contested, can be contested either in this proceeding or in a quo warranto proceeding.

Mr. Draugelis: Assuming he is a successful candidate, That's true.

The Court: If he is a successful candidate. And if he loses, of course, the matter becomes moot.

Mr. Draugelis: Moot. Right.

The Court: However, the other way around, if we keep him off the ballot and the election comes and goes, then the voters would never have a chance to vote for him; he would never have an opportunity to be elected; and if it should turn out that he has a right to be on the ballot, we would have deprived him in such a way of that right that it could not be redressed.

Mr. Draugelis: Yes. We didn't—I think I can speak for seven commissioners. I can only recommend, of course, and I would recommend that—well, may I say—

The Court: Well, none of us can change the law, and if the law is such that I am not permitted to make any alteration in what I say, I will be bound. I don't think that's the law. I think that until the time the matter gets into court, into the higher court, the trial court can change, not the decision, but his reasonings. And I don't even intend to change reasoning.

It's just that I am very uncomfortable with trying to give you the opinion now. Frankly, I worked through most of the night, and I did this only because I felt there was time pressure, both from the standpoint of the City in printing ballots and from the standpoint of Reverend Schweitzer in getting a campaign under way. So you are not getting a polished or finished product.

Mr. Draugelis: Sure. I will so stipulate on the record, that the Court may have a reasonable time after the issuance of the opinion today to submit this opinion in writing, and we will have adequate time to protect the City's rights of appeal, I'm sure.

The Court: I am going to go ahead then. Let me announce to you and also to the people who are present here in the courtroom that this will take a long time, and I will not be offended if anybody feels he has to go. It is understood we are all busy people of affairs. I don't know how long this may take. I may still be going an hour and a half from now.

Mr. Draugelis: Excuse me, your Honor.

The Court: All right. To get into the opinion itself.

Mr. Draugelis: I thought we were going to be handed an opinion today, so I have committed myself and will perhaps leave, and I want to apologize beforehand.

The Court: Do you have anybody here to take notes?

Mr. Draugelis: I will have possibly, yes. Might I add, ask the Court before we get into the opinion: Did the Court in reaching its decision rely on the fact that Reverend Schweitzer was a minister? Is that at all germane to the issue.

The Court: This is one of the arguments about which I am not at all sure. Let me put it this way: Yes, it is germane to a consideration of the effect of the statute. One of the issues which I am not at all certain of and on which I have prepared notes, but at this moment I don't know whether I will rely on, is the proposition that this charter provision violates his rights under the provision of the Constitution which assures religious liberty.

Mr. Draugelis: You see, I was always afraid of this particular aspect of the case. However, it was not pleaded, nor is any affidavit in as a matter of record, that the plaintiff in this case is a minister of the gospel.

The Court: Well, is there a real dispute about it?

Mr. Draugelis: No, there isn't.

The Court: Well, then, why should—

Mr. Draugelis. It was never argued nor even pleaded, at least in the short time I had, I think five days, your Honor.

The Court: Yes.

Mr. Draugelis: To get this prepared. I had to isolate it to what I thought were the problems then. I didn't view this as a problem, nor did I address myself to it. In five days I couldn't, because it hadn't been made a matter of record. That's why I call it to this Court's attention at this time. And I think I will—

The Court: You might want to have an opportunity to reargue.

Mr. Draugelis: You see, here I was called into the case on Tuesday to submit a complete argument to the Court on Friday.

The Court: Yes.

Mr. Draugelis: And then five days later a written brief, I called. I called counsel and I pointed out to him this particular problem.

The Court: Yes.

Mr. Draugelis: I said, "Now, you haven't alleged Reverend Schweitzer is a minister of the gospel. Therefore I am not going to address myself to the First Amendment freedoms."

The Court: Yes.

Mr. Draugelis: Counsel then didn't file an affidavit. I went on and, as you know, argued from the other areas. That's the reason I asked the Court this question at this time.

And then of course we are going to have a record—perhaps we are going to have a record on appeal. And now the issue is going to be quite germane.

Had I been asked to stipulate to the fact of this, I would have, I'm sure. It is a fact.

But the question of whether or not it was an issue in this case was very relevant, and I rejected it as an issue after consulting with counsel. And I think, if the Court recalls, on the date of oral argument, the first thing I objected to was the statement that he is and that we were

going to discuss on the basis of ownership of property, and that only.

You see, why that becomes so important is we have perhaps 75 sister cities with a similar type provision in their charters, and we feel perhaps that we are carrying the burden for them through these proceedings, and they may not have a minister challenging their charters. That's why I was most concerned about that provision.

The Court: Well, my only reaction is that perhaps we should wait to hear what is said.

Mr. Draugelis: Sure.

The Court: And it might be in order to ask for a rehearing.

Mr. Draugelis: All right.

The Court: Time is becoming an acute problem. But let's pass the bridge of religious considerations as we get to it.

Mr. Draugelis: All right, your Honor.

The Court:- Plaintiff is a home rule city. Section 4.4 of its charter provides:

> "Except as otherwise provided in this charter, an elector of the city shall be eligible to hold an elective or appointive office, if he shall have been a resident of the city for two years immediately prior to the date of his election or appointment to office, and shall not be in default to the city, the County of Wayne, or to any school district located within the city. To be eligible to hold an elective office a person shall also have been, for a period of two years prior to the date of his election or appointment to office, the owner of property located therein and assessed for taxes by the city."

Plaintiff Peter Schweitzer is a Methodist minister. He wants to run for the Plymouth City Commission. He

meets the charter residence requirement for candidacy, but he does not meet the property ownership requirement.

The remaining plaintiffs are residents of Plymouth who have signed Reverend Schweitzer's nominating petition, indicating thereby and in their pleadings that they wish to have Reverend Schweitzer as a candidate for City Commission.

Procedurally this case arises from a refusal by the City Clerk to accept and file Reverend Schweitzer's nominating petition for the office of City Commissioner. The nominating petition was in all respects in order except that Reverend Schweitzer did not satisfy the charter requirement that he be for two years the owner of property located within and assessed for taxes by the City of Plymouth.

The City of Plymouth has a "strong Commission" form of government. The Commission of the City of Plymouth wields the entire legislative power vested in the City. Chapter 5, Plymouth Charter.

In addition, the Commission of the City of Plymouth wields great, albeit indirect, executive power. One of its members serves as Mayor. The Commission selects the Mayor, who presides over Commission meetings and is also titular and ceremonial head of city government.

More importantly, the Commission selects and at its pleasure removes the City Manager, who is the day-to-day administrative head of the executive branch of the city government.

The Commission also appoints the City Attorney, Board of Review, Personnel Service Appeal Board, and certain other boards and commissions. The City Manager appoints other important city officials but only with the ad-

vice and consent of the City Commission. Chapter 4, 5, 6, and 7, Plymouth Charter.

Thus in barring Reverend Schweitzer from running for the City Commission, the charter has excluded him from an important repository of governmental power.

There are other effects of Section 4.4 of the Plymouth Charter which should be briefly examined. The effects are obvious.

First, those Plymouth residents who are substantially without property are prevented from running for public office within the city.

Second, they are also prevented from electing representatives who, like themselves, are substantially unpropertied. One would not be surprised to find a belief on the part of the unpropertied persons that they could most adequately be represented in government by persons as poor and unpropertied as themselves.

Poor people are not the only ones who feel the bite of the Plymouth Charter. All residents of Plymouth, rich, poor, or in between, are deprived of a free choice of public representatives. All the voters of Plymouth, regardless of wealth, are denied the opportunity to have as a representative on the City Commission any person who fails the property test of Section 4.4 of the city charter.

For example, if such a person should emerge who has statesmanlike potential, who was popular with the electorate and anxious to serve his city, he could not run and the voters could not elect him. All voters, regardless of wealth, would be denied an opportunity to support such a candidate.

Moreover, there may be people of substantial property whose opportunity to run for office is destroyed by the

charter. The charter test is ownership of property assessed for taxes in Plymouth. Many forms and kinds of property are not subject to assessment or taxation by municipal units of government. For example, intangible personal property such as bank deposits, corporate stocks and bonds, are not assessed or taxed by the City of Plymouth. Michigan Statutes Annotated 7.556(1) et seq.

Also much of the tangible personal property located in Plymouth is not assessed or taxed there. Section 7.9, Michigan Statutes Annotated, exempts from taxation various kinds of personal property. For the most part, chattels which are held for personal consumption and enjoyment are not taxed.

For example, the seventh paragraph of Section 7.9, Michigan Statutes Annotated, exempts "household furniture, provisions and fuel to the value of $5,000.00 to each household."

And other paragraphs in this particular section of our statutes go on to exempt personal property as follows:

> "Sixth, the library, family pictures, school books, one sewing machine used and owned by each individual or family, and wearing apparel of every individual."

The eighth paragraph of this particular section goes on to exempt "the working tools of any mechanic not to exceed in value the sum of $500."

Also the eleventh paragraph exempts "personal property of the value not to exceed $500 used by a householder in the operation of a business in his dwelling, or at one other location in the city, township or village where the householder resides."

Under Section 9.250, Michigan Statutes Annotated, automobiles held for personal use are exempt from assessments or taxation by city government. So are most boats, particularly pleasure boats. See Section 7.281, Michigan Statutes Annotated.

Speaking generally, these exemptions cover much tangible personal property which is not held for commercial use but for the consumption and enjoyment of the owner.

Let us take an example which will consider the operation of these various exemption provisions in the general tax code of Michigan. Our hypothetical example will be that of a skilled tradesman who rents a residence in Plymouth, an apartment or a flat; who owns his own household furniture, furnishings and wearing apparel; who owns an automobile for personal use; who has a modest outboard motorboat; and who has a bank or savings and loan account with an average balance running four figures.

This man may not hold public office in Plymouth. The man we described I do not believe is unusual, and he is by no means a pauper. From an economic point of view, he would appear to be a rather solid stable citizen. Along with propertyless persons, he is barred from holding office in Plymouth, and its citizens are barred from having him as their representative.

As I have noted, these people are not necessarily poor. From affidavits filed in this case, the renters of residential property in Plymouth may approach 20 per cent of all householders. Undoubtedly there are many renters of residential property in Plymouth who, like the man in our example, feel the pinch of Section 4.4 of the charter.

Indeed, a man might be very wealthy and still be barred from elective office in Plymouth. Let us take for example

a hypothetical millionaire. He owns a winter residence in Florida, rents an apartment in Plymouth (with only the customary household and personal effects). He owns a 40 foot pleasure boat; a Cadillac automobile. He owns corporate stock and municipal bonds worth half a million dollars and has bank deposits with average balances running to six figures. He is barred from holding office in Plymouth. Nor is it open to the voters of Plymouth to choose such a man as their representative.

It is even possible, although not probable, for a person to own real estate in Plymouth without being eligible for public office. This would be the case if the property were his home and the entire value of it did not exceed the homestead exemption set forth in Section 7.7 of Michigan Statutes Annotated. Such real estate would not be assessed for taxation in Plymouth.

Thus the charter not only erects a barrier to public office against unpropertied persons. It bars from elective public office those whose estates are entirely, or almost entirely, in the form of intangibles.

It bars from public office those whose estates are entirely, or almost entirely, in the form of personal property held for private pleasure and consumption.

It bars from public office those persons whose holdings are entirely, or almost entirely, in a combination of those forms, that is intangible personal and chattels held for personal enjoyment or consumption.

In considering the effect of the charter, it seems appropriate to notice judicially the growth of corporations in this country. With this growth there has been a growth in the amount of wealth which is in the intangible form of corporate stocks and bonds. Such wealth is not assessed

and taxed by local units of government, and its ownership would not qualify a person for public office under the Plymouth charter.

Let me make one more observation about the effect of the charter. Taking into account the statutory tax exemptions for intangibles and personalty held for consumption, Section 4.4 of the Plymouth charter has a particularly sharp effect upon one class of persons, although probably not by design. Clergymen, who are furnished living quarters by their church or their parishioners, might well live a lifetime in Plymouth without acquiring property which is assessed for taxation by the city. Such ministers are barred from local office by the Plymouth charter and the citizens of Plymouth are barred from electing them.

Having examined the effect of the disputed charter provision, we turn to the ultimate question before the Court: Is it constitutional?

No decision of an appellate court in Michigan has been called to my attention which deals with this issue. The case then is one of first impression in Michigan insofar as I am aware.

It is my belief that the challenged section of the Plymouth city charter is unconstitutional.

First let me observe that this conclusion does not turn the Court's appraisal of the wisdom of Section 4.4 of the charter. The wisdom of laws enacted by the people, directly or through their legislative bodies, is not a matter for judicial review. For purposes of judicial review, the people and their legislators may enact unwise laws as long as they do not deprive citizens of their constitutional rights. It is not the wisdom of the Plymouth charter, but its constitutionality which is here being reviewed.

Section 4.4 of the Plymouth city charter fails the first constitutional test established by the Michigan Constitution of 1963. It is contained in the very first section of the very first article of the Michigan Constitution which states:

> "All political power is inherent in the people. Government is instituted for their equal benefit, security and protection."

The home rule provisions of the State Constitution must be read along with Article I, Section 1 of the Michigan Constitution, and the home rule statutes must be read subject to this provision of the State Constitution.

Thus the government of Plymouth, including its City Commission, must be instituted for the equal benefit, security and protection of all of the people of Plymouth, regardless of wealth.

A law which prevents unpropertied persons from serving in the legislative branch of city government does not institute a government for the equal benefit, security and protection of all.

Such a law creates a government which favors persons of wealth. Property ownership prerequisites for the holding of public office violate Article I, Section 1, of the Michigan Constitution.

Moreover, there is another infirmity in the Plymouth charter under Article I, Section 1. The first sentence of the section provides:

> "All political power is inherent in the people."

We know that in densely settled areas political power inherent in the people cannot be exercised directly in town meeting type government. In modern urban society, the

inherent political power of the people can only be exercised through elected representatives.

The political power which is vested in all the people can be exercised by all of the people only if all are given a substantially equal opportunity to select representatives in government. Equal rights of selection of governmental representatives does not exist if we grant to the rich man but deny to the poor man the opportunity to elect one's own kind to represent him.

Section 4.4 of the Plymouth charter offends Section 1 of Article I of the Michigan Constitution in failing to give all persons equal opportunity to elect governmental representatives of their own choice.

Voters may well feel that they are best represented by public officials who are like themselves, on the theory that such persons can readily identify with and understand the voter. In Plymouth unpropertied voters may not select unpropertied representatives on the City Commission.

I am mindful that from earliest American history to the present day voters of modest means have time and time again elected men of great wealth to public office. This is their right. But when the City of Plymouth takes from one class of citizens the opportunity to select persons like themselves for their representatives in government, it dilutes the voting power of this class of citizens and impairs the political power which Article I, Section 1 of the State Constitution vests in them. This is another mischief of the Plymouth charter which renders it unconstitutional.

There is another constitutional safeguard which is offended by Section 4.4 of the Plymouth city charter—the safeguard of equal protection of the laws. This safeguard is erected by provisions in both the United States Constitution and the Michigan Constitution.

The Fourteenth Amendment of the United States Constitution prohibits a state from denying equal protection of the laws to any person within its jurisdiction. An equivalent provision is to be found in Article I, Section 2 of the Michigan Constitution.

Admittedly these provisions have never been held to require that all persons, no matter how dissimilar, should be treated alike. For example, it is not necessary for laws to treat children and adults in identical fashion. For example, there may be special limitation upon children's rights to drive and to drink intoxicants. And I could go on with other examples.

The equal protection clause does not require that the law deal similarly with persons who are similarly situated. In this particular case, rich and poor are similarly situated with respect to their relationship to government and to sharing of governmental powers.

The equal protection clause permits reasonable classification as long as persons within each class are treated equally. However, invidious classification can never be deemed reasonable. While there is a real difference in skin color of negroes and whites, this does not make racial classification reasonable when the classifying law treats negroes more harshly than whites.

The issue before us is whether the charter classification is reasonable or invidious. It is a classification which divides persons into two groups with respect to eligibility to hold office. One group consists of residents who have been for two years or more the owners of property located within the City of Plymouth and assessed for taxes by the City. The remaining residents are in the other group.

For a classification to be reasonable, it must be reasonably related to some proper governmental objective. Classification based upon the ownership of property is not necessarily per se unlawful. It may be proper if related to a lawful governmental objective. A distinction between rich and poor for purposes of a public welfare law would be valid, since it is reasonable classification related to an appropriate governmental objective.

However, respecting the allocation of political power among people, the favoring of one economic group or a class over another is indistinguishable from the favoring of one racial group over another. Both are unconstitutional, since they are not reasonably related to a permissible governmental objective. Not being so related, each classification is invidious in and of itself.

See *Harper v. Virginia Board of Elections,* 16 L. Ed. 2d 169, in which the United States Supreme Court overruled an earlier precedent and held that a state poll tax violates the equal protection clause of the Fourteenth Amendment. The Court concludes:

> ". . . that a State violates the equal protection clause . . . whenever it makes affluence of the voter . . . an electoral standard."

Further, the United States Supreme Court observes that:

> "Lines drawn on the basis of wealth or property, like those of race . . . are traditionally disfavored."

Also see *Anderson v. Martin,* 375 U.S. 399, 11 L. Ed. 2d 430, which holds that a state violates the equal protection clause of the Fourteenth Amendment when the State, through racial ballot designations encourages citizens to

vote solely on the basis of race and discourages negroes from becoming candidates.

These cases are not controlling precedents, it is recognized. But they provide analogies which I think are to be extended to this case, inasmuch as this case deals with the sharing of political power.

The conclusion is inescapable that the property test of the Plymouth charter deprives Reverend Schweitzer of equal protection of the laws in violation of our State and Federal Constitutions.

My conclusion that the property test of the Plymouth charter is not related to a permissible governmental objective will be further analyzed in the discussion of due process. Article I, Section 17, prohibits the State, inter alia, from depriving persons of liberty without due process of law. Freedom to run for public office and opportunity to be represented by candidates of one's choice are liberties which are protected by the Michigan due process clause. They are liberties which may not lawfully be taken away without due process. Due process not only requires that the procedures used in limiting liberty be fair, but the law which limits liberty must meet the test of substantive due process.

Over the years the courts have developed the substantive due process tests of the goal or purposes of laws which limit or take away an individual's freedom. Under substantive due process tests, liberty and property may be reasonably regulated by law for the public health, safety, morals, welfare or even general convenience. But laws which do not pursue a permissible governmental objective are not in the category of reasonable regulation. Laws which offend basic principles of representative democracy

do not have a permissible governmental objective. Section 4.4 of the charter of the City of Plymouth is such a law.

Webster's New International Dictionary (Merriam Company, Springfield, Mass., 1965) defines democracy as:

> "Government by the people . . . a form of government in which the supreme power is vested in the people and exercised by them directly (as in the Greek city-states or the New England town meeting)—called direct democracy . . . [or] a form of government in which the supreme power is vested in the people and exercised by them indirectly through a system of representation and delegated authority in which the people choose their officials and representatives at periodically held free elections—called also representative democracy."

There are broader definitions in *Webster's International* incorporating equality of opportunity and the eradication of class distinctions, but let us rest on the definition set forth above. This definition is perhaps no more than a precise and prosaic rendition of what the United States Supreme Court once called Abraham Lincoln's vision of "governmental of the people, by the people [and] for the people." (See *Reynolds v. Sims,* 377 U.S. 533 at 568, 12 L.Ed. 2d, 506, at 531.)

At the heart of the concept of democracy lies self-government, direct or through freely elected representatives. Section 4.4 of the Plymouth charter is not consistent with the principles of democratic government. The Plymouth charter excludes from elective public office those who are poor, those who are unpropertied, those whose holdings are entirely in the form of intangible personalty, those whose estates are entirely in the form of personal property held for consumption or enjoyment.

The opportunity for direct self-government by public office holding is destroyed for such excluded persons. Their opportunity for indirect self-government through representation is thwarted by depriving such excluded persons of the opportunity to be represented in government by persons who are most like themselves. Moreover, all persons in Plymouth are stultified in their opportunity for indirect self-government, because their freedom of choice of governmental representatives does not extend to those persons excluded from public office by Section 4.4 of the charter.

The destruction and frustration of direct and indirect self-government must have been a goal deliberately pursued by the framers of Section 4.4 of the Plymouth city charter. The purpose and effect of Section 4.4 of the city charter is so offensive to basic principles of American representative democracy that one must conclude it deprives individuals of liberty without substantive due process of law in violation of the Michigan Constitution.

It might be worth commenting that the Michigan Supreme Court has in some respects given broader sweep to Michigan's constitutional due process clause than has the United States Supreme Court given to the due process clause as used in the Federal Constitution. Compare *People v. Stuart*, 74 Mich. 411, *People v. Therrien*, 80 Mich 187, with *Taylor v. Beckham*, 178 U.S. 548.

It should be noted before we leave the due process issue that a state or home rule city may constitutionally confine elective public office to residents. Home rule cities may protect their public offices from vagrants and may take steps to insure that public officials are stable representatives of the community. But the two year residence requirement for public office is more than adequate for this

objective. The property requirement in the charter goes far beyond what is needed to assure stability of residence among office holders.

We come now to a discussion about which I have great doubt. And I may very well omit the next section from the opinion as it formally appears. The next part of the discussion deals with Article I, Section 4, of the Michigan Constitution.

Mr. Draugelis: Off the record here for just a moment.
The Court: Yes.

(Whereupon there was a discussion off the record.)

The Court: Article I, Section 4, of the Michigan Constitution provides:

> "The civil and political rights, privileges and capacities of no person shall be diminished or enlarged on account of his religious beliefs."

If a person through religious belief carried out a vow of poverty, he would be ineligible to hold office in Plymouth. Applied to such a person, Section 4.4 of the charter would probably be unconstitutional as a diminution of his political rights, privileges and capacities on the basis of his religious belief.

Now we have a case which is only a short stone's throw away. We have a case in which a minister has no real property because he pursues a leadership role in a church which generally furnishes him with a residence. As a practical matter, the City of Plymouth is telling him that if he lives the customary life of a Methodist minister, he cannot run for office.

Does this not diminish his civil and political rights, privileges and capacities on account of his religious beliefs, My answer is yes. It is an answer which is admittedly not free from doubt. But I believe that there may be agreement from lawyers and judges who give weight to the Preamble of the Michigan Constitution, which states that its purpose is to secure "the blessings of freedom to ourselves and our posterity."

Mr. Draugelis: This is going to open Pandora's Box. You either have to deal with it on its face and say that this provision of the charter on its face is unconstitutional, or as applied to this particular plaintiff.

The Court: Yes.

Mr. Draugelis: And now we are talking about an application—

The Court: Yes.

Mr. Draugelis: A different issue than was argued before this Court and was briefed before this Court.

The Court: That's true. But, you see, my problem is that I can't ignore the law, and if you don't give me the law, that does not mean that the law doesn't exist.

Mr. Draugelis: But nowhere factually is this in the case.

The Court: I said earlier that the remedy would be to ask for rehearing.

Mr. Draugelis: All right.

The Court: But the law abjures me to know it, all of it. I am required to take judicial notice of all the law that is or applies.

Mr. Draugelis: I agree, your Honor. I am saying that factually was it before your Honor.

The Court: Well, we have said that there is no dispute that this man is a Methodist minister.

Mr. Draugelis: Well, we have had general discussions between all three of us, but the point, the issue here framed

by the pleadings, the affidavits factually, I point out that this was not in issue in this case.

The Court: Well, if there were request to amend, it might well be in order. But I think that this becomes a matter for plaintiff.

Mr. Draugelis: Yes, your Honor.

The Court: Or plaintiffs.

Let me turn next to those arguments of the defendant which have not thus far been answered. While the Home Rule Act permits cities to provide in their charters for the "qualifications, duties, and compensation" of public officers, this does not enable cities to adopt requirements for public office which violate the State and National Constitution.

The charter qualification which was upheld in *Doyle v. Dearborn*, 370 Mich 236, was a prohibition on dual office holding, which does not remotely resemble the property test at issue in this case.

The Plymouth charter is not saved from its constitutional infirmities by the fact that a majority of the electors of Plymouth adopted it and can amend it. Constitutional rights are guaranteed to individual citizens. Such rights cannot be taken away by a majority or even by a vote which is one short of being unanimous. Nor is the individual citizen who is unconstitutionally deprived of his rights relegated to the remedy of an appeal to the electorate. He may come directly to the courts for relief.

With respect to the School Code of 1955, which is said to contain a property test of eligibility for school board office, several observations are in order. First, this Court is not dealing with the constitutionality of the 1955 School Code. Second, no authority has been called to this Court's attention which upholds a property test for public office in the 1955 School Code or in any other Michigan legislation.

Opinion 2715 of the *1951 Opinions of the Attorney General* of Michigan does not support the defendant's argument. Indeed, that opinion concludes:

> "that in order to be a 'qualified elector' so as to be eligible to run for the school board in this district [George Washington Carver School District No. 1, Royal Oak Township] a candidate need not be a property owner."

The opinion does not rule on the validity of that portion of the 1955 School Code which requires property ownership. The opinion interprets, applies and inferentially upholds that section of the code which permits unpropertied persons to serve as school board members.

In *Attorney General v. Cisco,* 362 Mich 649, the validity of the property ownership requirement for school board candidacy under the 1955 School Code was not litigated. The issue was neither raised by the litigants nor decided by the Court.

The fact that many cities in Michigan have committed the same constitutional error as Plymouth does not save Section 4.4 of the city charter of Plymouth.

The defendants have cited a number of decisions in their brief which uphold property tests for the holding of public office. No Michigan decision has been cited, but the Court's attention is called to decisions by appellate courts of Nevada, West Virginia, Louisiana, Maine and New York. The defendant's brief shows excellent scholarship. History, however, has overtaken the defendants.

I believe that the decisions cited by the defendants are part and parcel of the bygone era of judicial self-abnegation. During this era of our recent past, courts kept hands

off in those cases which were concerned with the distribution of power. During this self-abnegation era, the manner in which political power was allocated among the people by state constitutions, statutes and local charters was thought to be a matter quite inappropriate for judicial intervention.

The judiciary was admonished to stay out of this "political thicket." This it did, by and large, either by finding that the issue presented was a political question not cognizable by a court, or by refusing to upset standards enacted in state constitutions, statutes or local charters.

Eventually the judiciary could not stomach the affront to democratic ideals which resulted from gross malapportionment of legislative offices. The courts entered the thickets to correct the wrong.

The apportionment decisions of the United States Supreme Court marked the end of judicial reluctance to review and overturn legislative or popular distribution and allocation of political power.

Courts are now moving to assure due process and equal protection in the distribution of political power and in the allocation of political opportunity. In doing so they are advancing the ideal of democratic self-government. The ideal is government of the people and by the people. In contrast, the Plymouth city charter embodies the plutocratic concept of government of the people by the propertied. As long as the higher courts of this State leave me free to withhold it, I cannot in good conscience put the stamp of judicial approval upon such a plutocratic doctrine.

The property ownership requirement as a prerequisite for public office is an undemocratic relic of a bygone age. It is time to relegate it to the historical museum.

For these reasons, a writ of mandamus should issue as prayed, but without costs, this being a novel public question.

This is the Court's opinion, gentlemen.

Mr. Draugelis: Thank you, your Honor.
Mr. Jabara: Thank you, your Honor.

2:58 P. M.

State of Michigan,
County of Wayne—ss.

I hereby certify that I reported stenographically the foregoing proceedings at the time and place hereinbefore set forth; that the same was later reduced to typewritten form; and that the foregoing is a true, full and correct transcript of my stenographic notes so taken.

Irma B. Miller,
Official Court Reporter.

Detroit, Michigan,
March 8, 1967.

APPENDIX "D"

STATE OF MICHIGAN

CHARTER OF THE CITY OF PLYMOUTH, MICHIGAN
WAYNE COUNTY, MICHIGAN

Chapter Four

Section 4.4

Except as otherwise provided in this charter, an elector of the city shall be eligible to hold elective or appointive office, if he shall have been a resident of the city for two years immediately prior to the date of his election or appointment to office, and shall not be in default to the city, the County of Wayne, or to any school district located within the city. To be eligible to hold an elective office, a person shall also have been for a period of two years prior to the date of his election or appointment to office, the owner of property located within and assessed for taxes by the city. In the case of appointive officers, the Commission may, by a two-thirds vote, waive the requirement of residence in the city at the time of appointment: Provided, That each person for whom such requirement is waived shall become a resident of the city within ninety days following his appointment and shall remain a resident of the city for the entire time that he shall hold office in the city government. Failure to so become a resident of the city and thereafter to be a resident of the city shall create a vacancy in the office to which any such person was appointed.

SUPREME COURT, U. S.
Office-Supreme Court, U.S.
FILED
JUN 30 1969
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, [redacted] 1969

No. [redacted] 95

PETER D. SCHWEITZER, LARRY F. GROTH, NAOMI D. PELLEY, RONALD R. PELLEY, ROGER J. MORRIS, HENRY BERGHOFF, ALBERT M. FLUCKEY, KRISANN K. FLUCKEY, ELDRIDGE H. RAVEN, MAUREEN MINEHART, and JUDITH BERRY,
Petitioners,

v.

CLERK FOR THE CITY OF PLYMOUTH and ELECTION COMMISSION FOR THE CITY OF PLYMOUTH,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

BRIEF IN OPPOSITION FOR RESPONDENTS CLERK FOR THE CITY OF PLYMOUTH AND ELECTION COMMISSION FOR THE CITY OF PLYMOUTH

DRAUGELIS AND ASHTON
By: EDWARD DRAUGELIS
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June 20, 1969

Interstate Brief & Record Co., 1036 Beaubien St., Detroit, Michigan 48226
WO. 2-8745—WO. 2-8732

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